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Federal Communications Commission  
WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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In the Matter of

Telephone Number Portability

)  
)  
) CC Docket No. 95-116  
) RM 8535

**COMMENTS OF TIME WARNER COMMUNICATIONS HOLDINGS, INC.**

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Time Warner Communications Holdings, Inc. ("TWComm") hereby files its comments in response to the Further Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1</sup>

In recovering the costs of long term number portability, the Commission should adopt the following approach. First, shared costs<sup>2</sup> that are not attributable to particular cost causers should be recovered from all telecommunications carriers in a particular region based on their respective gross telecommunications revenues minus payments to other carriers. Shared costs that are directly attributable to particular

2 TWComm understands the term "shared costs" as used in the Further Notice and in these comments as costs of long term number portability that are incurred by the administrator of the service management system. These costs are "shared" by the telecommunications industry. As indicated below, some of these costs may be appropriately attributed to particular carrier activity. TWComm understands "carrier-specific" costs as those incurred by individual carriers.

carriers' activities should be recovered on an appropriate cost causative basis. Second, carrier-specific costs directly caused by the deployment of number portability should be borne by the carriers that incur them. Finally, the Commission should not establish rules for the recovery of carrier-specific costs that are not directly attributable to the deployment of number portability.

**II. COST RECOVERY MECHANISMS SHOULD BE ESTABLISHED ONLY FOR INDUSTRY-WIDE AND DIRECT CARRIER-SPECIFIC NUMBER PORTABILITY COSTS**

In the Further Notice, the Commission tentatively concludes that there are three types of costs involved in providing long-term number portability: (1) costs shared by the industry as a whole, (2) costs incurred by individual carriers and directly caused by the deployment of long-term number portability, and (3) costs incurred by individual carriers and not directly caused by long-term number portability.<sup>3</sup> TWComm supports this tentative conclusion.

TWComm also agrees with the Commission that the requirement in Section 251(e)(2) that "the cost of establishing . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis" should apply to the first and second categories of costs associated with long-term number portability, but not to the third category.<sup>4</sup> As the Commission

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<sup>3</sup> See Further Notice at ¶ 208.

<sup>4</sup> See id. at ¶ 209.

rightly points out, investments such as the deployment of Intelligent Networks or Advanced Intelligent Networks are infrastructure upgrades that can and will be recovered by carriers through the provision of a wide range of services other than number portability.<sup>5</sup> This approach is also consistent with FCC precedent. In the 800 number portability context, for example, the Commission with the support of the BOCs and GTE, treated the SS7 deployment required for 800 portability as an infrastructure investment for which there was no need to establish a separate recovery mechanism.<sup>6</sup>

But while the costs associated with long-term number portability should be appropriately limited, the Commission should not, with very limited possible exceptions,<sup>7</sup> attempt to exclude certain carriers from the obligation to pay for at least some portion of those costs. Requiring a carrier to pay for part of the cost of number portability essentially results in

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<sup>5</sup> For example, upgrades required for a long-term number portability solution can also be used to provide CLASS features.

<sup>6</sup> See Provision of Access to 800 Service, 4 F.C.C.R. 2824 at ¶ 70 (1989). Moreover, given that Congress offered no explanation as to the meaning of the phrase "the costs associated with long-term number portability," courts will likely grant considerable deference to the Commission's determination that this language does not encompass carrier-specific costs not directly attributable to long-term solutions. See Chevron U.S.A. v. Natural Resources Defense Council, 467 U.S. 837, 843 (1984) ("if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute").

<sup>7</sup> See footnote 8 infra.

requiring that carrier's customers to pay, since increased carrier costs will be passed on to customers. Since all customers of telecommunications carriers will benefit from the competition for which number portability is a necessary precondition,<sup>8</sup> it is fair to require all such customers to pay for the deployment of that capability.

Long term number portability will also make telecommunications networks more valuable and useful to subscribers because it allows callers to reach competitive LECs' subscribers without having to learn a new telephone number. The value that network users attribute to this service is reflected in the substantial amount of directory assistance service subscribers will not have to purchase when number portability is implemented.

Further, without formally demonstrating that the prerequisites have been met for the exercise of its forbearance

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<sup>8</sup> For example, number portability will benefit subscribers who wish to change wireline carriers because it will make it possible for other carriers like TWComm to compete on a more equal footing. Even incumbent LEC subscribers who choose not to change carriers will benefit from increased competition made possible by number portability because it will cause their carriers to lower rates and provide improved and innovative services. The same principles apply in the wireless service context because number portability will increase competition between cellular and PCS carriers. Wireless subscribers will also benefit in general from increased landline competition because it should result in lower costs for terminating calls on LEC networks and therefore presumably lower wireless rates as well. Finally, long distance customers will benefit from number portability because it will encourage greater competition for alternative access service, thus lowering the cost of long distance service.

authority under Section 10(a), the Commission does not have the discretion to relieve carriers from the responsibility of paying for at least part of the cost of long-term number portability.<sup>9</sup> The statute clearly states that long-term number portability costs "shall be borne by all telecommunications carriers." The term "telecommunications carrier" is statutorially defined.<sup>10</sup> The Commission is therefore obligated to require all entities that fall within that definition to bear at least some portion of the cost of long-term number portability.<sup>11</sup>

As to whether the Commission should require the recovery of number portability costs from carriers as opposed to end users, the statute is also clear on its face: only carriers are

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<sup>9</sup> The only telecommunications carriers to whom it would seem possibly appropriate to apply such forbearance are those CMRS carriers which the Commission excluded from the number portability obligations in the Report and Order. See Further Notice at ¶ 156 (excluding from number portability obligations Private Paging, Business Radio Services, Land Mobile Systems on 220-222 Mhz, Public Coast Stations, Public Land Mobile Service, 800 Mhz Air-Ground Radio-Telephone Service, Offshore Radio Service, Mobile Satellite Services, and Narrowband PCS Services). Subscribers to those entities' services will probably not benefit materially from number portability. Moreover, any recovery based on gross revenues would likely result in a de minimis payment from most of those entities. It is important to point out, however, that any decision to forbear from applying Section 251(e)(2) on such carriers should be subject to change if the relevant circumstances change.

<sup>10</sup> 47 U.S.C. § 153(44).

<sup>11</sup> The Supreme Court has held that a similar provision found in Section 203(a), stating that "[e]very common carrier, except connecting carriers, shall . . . file [tariffs]," leaves the Commission no discretion to relieve any carrier of the mandatory obligations imposed by that provision. See AT&T v. MCI, 114 S.Ct. 2223 (1994).

obligated to bear the cost. The Commission's tentative conclusion to that effect is therefore correct.<sup>12</sup>

TWComm also supports the Commission's tentative conclusion that the rules for recovering the costs of long-term number portability should comply with the two overarching principles governing cost recovery for currently available number portability solutions.<sup>13</sup> Both the requirement that the cost recovery mechanism not give one service provider an "appreciable, incremental cost advantage over another service provider" and the requirement that the cost recovery mechanism "not have a disparate effect on the ability of competing service providers to earn a normal return" are equally valid in the context of long-term solutions.<sup>14</sup> Moreover, these principles as well as other rules for long-term solution cost recovery implemented in this proceeding should, as the Commission proposes, apply to states that "opt out" of the national database system just as they do in other areas.<sup>15</sup>

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<sup>12</sup> See Further Notice at ¶ 209. As noted above, carriers' number portability payments will be passed on to subscribers. But it is sound policy to allow carriers to decide how to recover from their subscribers. This approach most closely reproduces market conditions in that carriers will be free to recover joint and common costs according to the demand price elasticities of their services. See William J. Baumol and J. Gregory Sidak, "Toward Competition in Local Telephony," at 52 (1994).

<sup>13</sup> See Further Notice at ¶ 210.

<sup>14</sup> See id.

<sup>15</sup> See id. at ¶ 211.

**III. COSTS NOT ATTRIBUTABLE TO A SPECIFIC CARRIERS' ACTIVITIES SHOULD BE RECOVERED BASED ON CARRIERS' TELECOMMUNICATIONS REVENUES; COSTS ATTRIBUTABLE TO SPECIFIC CARRIERS SHOULD BE RECOVERED FROM THOSE CARRIERS.**

In the Further Notice, the Commission discusses the possibility of dividing the shared costs into subcategories for which different specific recovery mechanisms might apply. The Commission suggests three such subcategories: (1) non-recurring costs such as the development and deployment of database hardware and software, (2) recurring costs such as the ongoing administration of regional databases, and (3) "costs for uploading, downloading, and querying" the database. TWComm agrees that, subject to qualifications regarding the third subcategory described below, the shared costs may be logically organized in this way.

TWComm also agrees that it may make sense to establish different recovery mechanisms for the different subcategories. Thus, the costs that cannot be attributed to any particular carrier activity, which would appear to at least include the nonrecurring and recurring costs, should be recovered from all telecommunications carriers. If any costs can be fairly and accurately attributed to specific carrier activity, such as uploading and downloading, they should be recovered from the carrier that initiates that activity.

**A. Shared Costs That Cannot Be Attributed To Any Particular Carrier Activity Should Recovered From All Telecommunications Carriers.**

The most appropriate policy for recovering the shared costs that cannot be attributed to a specific carrier's actions is to

require all telecommunications carriers to pay regardless of whether they use the master number portability databases.<sup>16</sup> As mentioned, this approach makes sense because subscribers of all services provided by telecommunications carriers will benefit from long term number portability.

Moreover, nonattributable shared costs should be recovered on a regional, rather than a national, level.<sup>17</sup> In all likelihood, service management systems ("SMS") will be deployed on a regional basis. Rather than adding a further layer of bureaucracy to aggregate costs on a national level, it would be simpler to allow each regional administrator to recover costs for its geographic area of responsibility.

These costs should also be allocated among carriers in a particular region in proportion to each telecommunications carrier's total gross telecommunications revenues minus charges paid to other carriers.<sup>18</sup> As the Commission correctly explains in the Further Notice, a carrier's gross revenues should reflect the extent to which that carrier and its subscribers have benefited from the competition that number portability helps to make possible.<sup>19</sup> Such an approach also complies with the two overarching principles for number portability cost recovery and

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<sup>16</sup> See id. at ¶ 212.

<sup>17</sup> See id.

<sup>18</sup> See id. at ¶ 213.

<sup>19</sup> See id.

it ensures that all carriers contribute. The subtraction of payments to other carriers correctly prevents double paying.

Finally, the nonattributable shared costs should be recovered on a monthly basis. The nonrecurring costs (in addition to reasonable carrying costs) should be recovered from carriers through monthly charges levied over three to five years. This approach is much more affordable for carriers than the alternative mentioned in the Further Notice, namely recovery through a large, one-time charge.<sup>20</sup> Spreading the cost over several years is also likely to increase the number of new entrants that contribute.<sup>21</sup> The recurring costs, which TWComm understands to be akin to overhead costs, should be recovered through monthly charges.<sup>22</sup>

**B. Shared Costs Attributable To Specific Carriers Should Be Recovered From The Telecommunications Carrier That Causes the Cost.**

It may be possible to identify accurately certain carrier activity (i.e., activity included in the third subcategory) that "causes" the database administrator to incur costs.<sup>23</sup> If so,

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<sup>20</sup> See id. at ¶ 217.

<sup>21</sup> A firm that becomes a telecommunications carrier in a particular region while the nonrecurring costs are being recovered should contribute to the amount to be recovered from the industry in the year the firm enters (and in subsequent years) based on its gross revenues minus payments to other carriers.

<sup>22</sup> See id.

<sup>23</sup> Presumably, this would not be possible for nonrecurring or recurring costs since those costs will be the same for the foreseeable future regardless of how often the master database is used.

carriers initiating such activity should pay for the costs they cause so that they have the incentive to function as efficiently as possible.

It should be pointed out, however, that, contrary to the suggestion in the Further Notice,<sup>24</sup> there are unlikely to be any shared number portability costs associated with "querying." The inclusion of querying in the third subcategory seems to be based on the Commission's understanding that a third party administrator might be responsible for overseeing a regional service control point ("SCP") pair (i.e., databases to be queried on a per call basis) in addition to the SMS (i.e., a database that SCPs would consult to update the records on ported numbers, but that would not be queried on a per call basis). But this is not an approach that is widely supported by the industry.<sup>25</sup> Rather, the general consensus is that a third party administrator will only be needed to oversee the SMS. There will be no need for the administrator to manage SCPs because competitive LECs can utilize the incumbent LECs' SCPs through interconnection agreements or avoid relying on the incumbent LEC's database by either establishing their own SCPs or by jointly using those provided by database suppliers such as Illuminet.<sup>26</sup>

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<sup>24</sup> See id. at ¶¶ 216, 219.

<sup>25</sup> For example, TWComm is not aware of any existing state number portability plan which currently contemplates that the SMS administrator will oversee an SCP pair.

<sup>26</sup> The SMS and individual carriers will communicate in ways other than uploading and downloading, but these activities

As to uploading and downloading, carriers will certainly engage in this activity and it is technically possible to track the carriers that participate in such transactions. It should be recognized, however, that identifying costs caused by uploading and downloading may be extremely difficult. Thus, if it is assumed, as indicated above and in the Further Notice, that some measure of costs will be recovered from all carriers in non-usage based charges, it would then be necessary to determine the "incremental" cost of each type of uploading/downloading transaction. This requires that some prediction be made as to the increase in the cost of running the SMS that will be caused over a certain range of production (i.e., the level of upload/download activity that would require the SMS administrator to incur further expense). Such predictions are more likely to be rough estimates than exact calculations.

Furthermore, for uploading and downloading to be recovered on a usage sensitive basis, a different level of incremental cost would have to be set for different types of transactions. For example, under the current parameters established by the Illinois Commerce Commission ("ICC"),<sup>27</sup> when a customer switches from one carrier (the "donor carrier") to another carrier (the "recipient

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cannot be fairly characterized as "querying." For example, when conducting repairs, the SMS may ask carriers to conduct an audit of the data contained in their SCPs to ensure that they are accurate. Unlike queries, such audits are not conducted on a per call basis.

<sup>27</sup> TWComm has included the most recent ICC SMS parameters as an attachment to these comments.

carrier"), both the donor and the recipient carriers upload information on the customer's ported number to the SMS. The SMS then conducts a series of procedures to ensure that the uploaded information is reliable and complete. Once these procedures have been finished, the SMS downloads the information by simply broadcasting it to all of the carriers on the system. Uploading the data therefore entails a larger expenditure of time and resources than downloading. Quantifying this difference with any kind of exactitude, however, would be difficult.

The Commission will have to determine whether, given these difficulties, it is possible to place the cost of uploading and downloading on the carriers initiating this activity. If such identification is not possible, however, these costs should be pooled and recovered in monthly payments from all carriers in a particular region according to gross telecommunications revenues minus payments to other carriers.

**C. It May Be Necessary To Conduct Periodic Review Of Third Party Administrators' Billing Procedures.**

In the Further Notice, the Commission asks whether it will be necessary to establish an oversight mechanism to ensure that third party administrators recover the shared costs of number portability in a competitively neutral manner.<sup>28</sup> First, the requirement that certain costs be recovered based on gross revenues attributable to service provided by telecommunications carriers minus charges paid to other carriers should be

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<sup>28</sup> See id. at ¶ 220.

sufficient to ensure neutrality for costs that cannot be attributed to specific cost causers. Periodic review of the administrators' billing procedures by the North American Numbering Committee ("NANC") or the Commission itself may nonetheless be advisable to ensure that this requirement is being met.

**IV. INDIVIDUAL CARRIERS SHOULD BEAR THEIR OWN DIRECT CARRIER-SPECIFIC COSTS OF NUMBER PORTABILITY.**

In addition to shared cost recovery, the Commission seeks comment on how direct, carrier-specific costs should be recovered. As with shared costs attributable to particular carriers, individual carriers should bear their own direct carrier-specific costs of long-term number portability. There are two fundamental reasons why this approach is preferable to the other recovery mechanism suggested in the Further Notice, i.e., requiring that these costs be pooled and recovered from all carriers.<sup>29</sup>

First, requiring carriers to recover their own costs gives the carriers the incentive to make the number portability-specific upgrades as efficiently as possible.

Second, if the Commission confirms its tentative conclusion that carriers should themselves bear carrier-specific costs that are indirectly related to number portability, pooling the carrier-specific costs directly related to number portability will create the incentive for misallocation. Specifically,

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<sup>29</sup> See id. at ¶ 221.

carriers that must make significant upgrades indirectly related to number portability will have the incentive to mischaracterize those costs as directly related to number portability so that they can recover them from the industry as a whole. Requiring carriers to individually bear their own costs associated with number portability removes this incentive.

Moreover, Section 251(e)(2) gives the Commission the discretion to recover the number portability costs in this manner. That provision requires that costs be recovered from all telecommunications carriers, but it does not require that each carrier pay the same amount or that each carrier pay for all categories of number portability costs.<sup>30</sup> The provision instead states that number portability shall be recovered from all carriers "on a competitively neutral basis as determined by the Commission." The Commission therefore appears to have the discretion to recover shared costs from all telecommunications carriers and to require carriers to recover their own carrier-specific costs, so long as this is done in a competitively neutral manner.

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<sup>30</sup> In any case, as a practical matter, most carriers will incur direct carrier-specific costs. All such carriers will therefore contribute to the costs of long-term number portability.

**V. CONCLUSION**

The Commission should implement rules for the recovery of the costs of long term number portability that are consistent with these comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brian Conboy", is written over a horizontal line.

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